

## **NINETEENTH DIVISION**

**[ CA-G.R. CEB-SP No. 05748, January 30, 2015 ]**

**ROLANDO T. RABAYA, PETITIONER, VS. SPOUSES JUDITHA R. NACU AND PAUL NACU AND ALL THOSE CLAIMING RIGHTS UNDER THEM, RESPONDENTS.**

### **D E C I S I O N**

**LAGURA-YAP, J.:**

This is a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure seeking to set aside the Judgment<sup>[1]</sup> dated December 9, 2010 and the Order<sup>[2]</sup> dated February 9, 2011 rendered by the Regional Trial Court, Branch 18 of Cebu City in Civil Case No. CEB-36650.

This case stems from a complaint<sup>[3]</sup> for Unlawful Detainer filed by petitioner Rolando T. Rabaya against respondents spouses Paul and Juditha Nacu on October 12, 2009, docketed as Civil Case No. 1464 in the Municipal Trial Court in Cities (MTCC) in Talisay City, Cebu. The subject matter of this case is a parcel of lot located in Barangay Cansojong, Talisay City, Cebu, denominated as Lot No. 7668 with an area of two hundred ninety-eight (298) square meters, more or less, covered by Transfer Certificate of Title No. 89104 in the name of the Heirs of Eustiquio Rabaya.

Petitioner Rolando T. Rabaya alleged that he is the grandson of Eustiquio Rabaya. Eustiquio was married to Gala Gabuya, with whom he had two children, namely; Virgilio Rabaya and Alfredo Rabaya. Alfredo married Rosita Cañesa<sup>[4]</sup> and they had five children, namely: petitioner Rolando, Edison, Oscar, Alicia and Consuelo. Alfredo died sometime in 1980. Virgilio died a bachelor on October 4, 1997<sup>[5]</sup>, leaving no compulsory heirs.

Petitioner claimed to have originally possessed the subject lot. However, when respondents, who are also his relatives, asked that they be allowed to enter the subject lot, he allowed respondents to enter and occupy the lot through his tolerance, subject to vacate upon his demand.

Unknown to the petitioner, respondents began claiming ownership of the subject lot. When petitioner asked the respondents to vacate, the latter refused to do so by claiming that the lot was sold to them. Thus, on April 13, 2009, petitioner through his counsel sent a letter<sup>6</sup> to respondents demanding for the latter to vacate and to turnover the physical possession of the lot to him. But respondents still refused to do so.

Thereafter, petitioner filed a complaint with the barangay but no settlement was reached by the parties.<sup>[7]</sup> Hence, petitioner filed this instant case in court seeking to recover possession of the subject lot.

On the other hand, respondents claim that petitioner has no cause of action against them. Respondents alleged that they possessed and occupied the subject lots as owners and not through the tolerance of the petitioner. They alleged that spouses Lucio Tabiolo and Dolores Rabaya acquired the subject lot from the heirs of Eustiquio Rabaya, namely: Gala G. Rabaya, Virgilio Rabaya and Alfredo Rabaya, as evidenced by the Extra-judicial Settlement with Sale<sup>[8]</sup> dated December 24, 1971. In 1985, respondents purchased the subject lot from Lucio Tabiolo and Dolores Rabaya, evidenced by the Affidavit of Confirmation of Sale<sup>[9]</sup> executed by Dolores Rabaya on April 23, 2009. Since then, respondents have been in continuous possession of the lot.

On March 29, 2010, the Municipal Trial Court in Cities of Talisay City, Cebu rendered a Decision<sup>[10]</sup> dismissing the case, the dispositive portion of which states:

"WHEREFORE, for failure of the plaintiff to present sufficient evidence that he is in fact an owner of the litigated lot, the above-captioned case is hereby dismissed. The counter-claims are also dismissed for insufficiency of evidence.

No pronouncement as to cost.

SO ORDERED."

Dissatisfied with the MTCC Decision, petitioners filed an Appeal<sup>[11]</sup> to the Regional Trial Court (RTC) docketed as Civil Case No. CEB-36650.

On December 9, 2010, the RTC rendered the assailed Decision<sup>[12]</sup> which affirmed *in toto* the MTCC Decision, thus:

"WHEREFORE, finding no cogent and compelling reason to disturb the March 29, 2010 Decision of the MTCC of Talisay City, Cebu, judgment is hereby rendered affirming *in toto* therefore dismissing this appeal.

SO ORDERED."

Thereafter, petitioner filed a Motion for Reconsideration<sup>[13]</sup>, but this was denied by the court a quo in the Order<sup>[14]</sup> dated February 9, 2011.

Aggrieved, petitioner filed the instant petition<sup>[15]</sup> raising the sole assigned error that:

THE LOWER COURT ERRED IN RULING THAT PETITIONER HAS NO SUFFICIENT EVIDENCE TO PROVE THAT HE IS AN OWNER OF THE DISPUTED PROPERTY<sup>[16]</sup>

### ***The Ruling of the Court***

Petitioner insists that he has sufficiently shown by preponderance of evidence that he is a co-owner of the subject lot while respondents claim of ownership has serious flaws. Thus, he is entitled to its material possession.